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PROTOCOL TO AMEND THE VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE

1. The Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage was adopted by a Diplomatic Conference, 8-12 September 1997, and was opened for signature at Vienna on 29 September 1997 at the 41st General Conference of the International Atomic Energy Agency. The Protocol will remain open for signature until its entry into force.

2. Pursuant to Article 21, the Protocol will enter into force three months after the date of deposit of the fifth instrument of ratification, acceptance or approval. After its entry into force, any State which has not signed the Protocol may accede to it (Article 20.3).

3. Attention is drawn to Article 19.1 which provides that a State which is a Party to the Protocol but not a Party to the 1963 Vienna Convention shall be bound by the provisions of that Convention as amended by the Protocol in relation to other States Parties to the Protocol, and failing an expression of a different intention by that State at the time of deposit of an instrument of ratification, acceptance, approval or accession shall be bound by the 1963 Vienna Convention in relation to States which are only Parties thereto.

4. The text of the Protocol, taken from a certified copy, and the annex thereto containing the consolidated text of the 1963 Vienna Convention as amended by the Protocol, prepared by the Secretariat pursuant to Article 24 of the Protocol, are reproduced herein for the information of all Members.

For reasons of economy, this document has been printed in a limited number.

PROTOCOL TO AMEND THE VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE

PROTOCOL TO AMEND THE VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING that it is desirable to amend the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, to provide for broader scope, increased amount of liability of the operator of a nuclear installation and enhanced means for securing adequate and equitable compensation,

HAVE AGREED as follows,

ARTICLE 1

The Convention which the provisions of this Protocol amend is the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, hereinafter referred to as the "1963 Vienna Convention".

ARTICLE 2

Article I of the 1963 Vienna Convention is amended as follows:

1. Paragraph 1(j) is amended as follows:

   (a) the word "and" is deleted at the end of sub-paragraph (ii) and is inserted at the end of sub-paragraph (iii).

(b) a new sub-paragraph (iv) is added as follows:

(iv) such other installations in which there are nuclear fuel or radioactive products or waste as the Board of Governors of the International Atomic Energy Agency shall from time to time determine;

2. Paragraph 1(k) is replaced by the following text:

(k) "Nuclear Damage" means -

(i) loss of life or personal injury;
(ii) loss of or damage to property;

and each of the following to the extent determined by the law of the competent court -

(iii) economic loss arising from loss or damage referred to in sub-paragraph (i) or (ii), insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage;
(iv) the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in sub-paragraph (ii);
(v) loss of income deriving from an economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in sub-paragraph (ii);
(vi) the costs of preventive measures, and further loss or damage caused by such measures;
(vii) any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court,

in the case of subparagraphs (i) to (v) and (vii) above, to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.

3. Paragraph 1(l) is replaced by the following text:

(l) "Nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage.

4. After paragraph 1(l) four new paragraphs 1(m), 1(n), 1(o) and 1(p) are added as follows:

(m) "Measures of reinstatement" means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The law of the State where the damage is suffered shall determine who is entitled to take such measures.

(n) "Preventive measures" means any reasonable measures taken by any person after a nuclear incident has occurred to prevent or minimize damage referred to in sub-paragraphs (k)(i) to (v) or (vii), subject to any approval of the competent authorities required by the law of the State where the measures were taken.

(o) "Reasonable measures" means measures which are found under the law of the competent court to be appropriate and proportionate having regard to all the circumstances, for example -

(i) the nature and extent of the damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;

(ii) the extent to which, at the time they are taken, such measures are likely to be effective; and

(iii) relevant scientific and technical expertise.

(p) "Special Drawing Right", hereinafter referred to as SDR, means the unit of account defined by the International Monetary Fund and used by it for its own operations and transactions.

5. Paragraph 2 is replaced by the following text:

2. An Installation State may, if the small extent of the risks involved so warrants, exclude any nuclear installation or small quantities of nuclear material from the application of this Convention, provided that -

(a) with respect to nuclear installations, criteria for such exclusion have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State satisfies such criteria; and

(b) with respect to small quantities of nuclear material, maximum limits for the exclusion of such quantities have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State is within such established limits.

The criteria for the exclusion of nuclear installations and the maximum limits for the exclusion of small quantities of nuclear material shall be reviewed periodically by the Board of Governors.

ARTICLE 3

After Article I of the 1963 Vienna Convention two new Articles I A and I B are added as follows:

ARTICLE I A

1. This Convention shall apply to nuclear damage wherever suffered.

2. However, the legislation of the Installation State may exclude from the application of this Convention damage suffered -

(a) in the territory of a non-Contracting State; or

(b) in any maritime zones established by a non-Contracting State in accordance with the international law of the sea.

3. An exclusion pursuant to paragraph 2 of this Article may apply only in respect of a non-Contracting State which at the time of the incident -

(a) has a nuclear installation in its territory or in any maritime zones established by it in accordance with the international law of the sea; and

(b) does not afford equivalent reciprocal benefits.

4. Any exclusion pursuant to paragraph 2 of this Article shall not affect the rights referred to in sub-paragraph (a) of paragraph 2 of Article IX and any exclusion pursuant to paragraph 2(b) of this Article shall not extend to damage on board or to a ship or an aircraft.

ARTICLE I B

This Convention shall not apply to nuclear installations used for non-peaceful purposes.

ARTICLE 4

Article II of the 1963 Vienna Convention is amended as follows:

1. At the end of paragraph 3(a) the following text is added:

The Installation State may limit the amount of public funds made available per incident to the difference, if any, between the amounts hereby established and the amount established pursuant to paragraph 1 of Article V.

2. At the end of paragraph 4 the following text is added:

The Installation State may limit the amount of public funds made available as provided for in sub-paragraph (a) of paragraph 3 of this Article.

3. Paragraph 6 is replaced by the following text:

6. No person shall be liable for any loss or damage which is not nuclear damage pursuant to sub-paragraph (k) of paragraph 1 of Article I but which could have been determined as such pursuant to the provisions of that sub-paragraph.

ARTICLE 5

After the first sentence in Article III of the 1963 Vienna Convention the following text is added:

However, the Installation State may exclude this obligation in relation to carriage which takes place wholly within its own territory.

ARTICLE 6

Article IV of the 1963 Vienna Convention is amended as follows:

1. Paragraph 3 is replaced by the following text:

3. No liability under this Convention shall attach to an operator if he proves that the nuclear damage is directly due to an act of armed conflict, hostilities, civil war or insurrection.

2. Paragraph 5 is replaced by the following text:

5. The operator shall not be liable under this Convention for nuclear damage -

(a) to the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and

(b) to any property on that same site which is used or to be used in connection with any such installation.

3. Paragraph 6 is replaced by the following text:

6. Compensation for damage caused to the means of transport upon which the nuclear material involved was at the time of the nuclear incident shall not have the effect of reducing the liability of the operator in respect of other damage to an amount less than either 150 million SDRs, or any higher amount established by the legislation of a Contracting Party, or an amount established pursuant to sub-paragraph (c) of paragraph 1 of Article V.

4. Paragraph 7 is replaced by the following text:

7. Nothing in this Convention shall affect the liability of any individual for nuclear damage for which the operator, by virtue of paragraph 3 or 5 of this Article, is not liable under this Convention and which that individual caused by an act or omission done with intent to cause damage.

ARTICLE 7

1. The text of Article V of the 1963 Vienna Convention is replaced by the following text:

1. The liability of the operator may be limited by the Installation State for any one nuclear incident, either -

(a) to not less than 300 million SDRs; or

(b) to not less than 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds shall be made available by that State to compensate nuclear damage; or

(c) for a maximum of 15 years from the date of entry into force of this Protocol, to a transitional amount of not less than 100 million SDRs in respect of a nuclear incident occurring within that period. An amount lower than 100 million SDRs may be established, provided that public funds shall be made available by that State to compensate nuclear damage between that lesser amount and 100 million SDRs.

2. Notwithstanding paragraph 1 of this Article, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount

of liability of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures that public funds shall be made available up to the amount established pursuant to paragraph 1.

3. The amounts established by the Installation State of the liable operator in accordance with paragraphs 1 and 2 of this Article and paragraph 6 of Article IV shall apply wherever the nuclear incident occurs.

2. After Article V, four new Articles V A, V B, V C and V D are added as follows:

ARTICLE V A

1. Interest and costs awarded by a court in actions for compensation of nuclear damage shall be payable in addition to the amounts referred to in Article V.

2. The amounts mentioned in Article V and paragraph 6 of Article IV may be converted into national currency in round figures.

ARTICLE V B

Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation.

ARTICLE V C

1. If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the public funds required under sub-paragraphs (b) and (c) of paragraph 1 of Article V and under paragraph 1 of Article VII, as well as interest and costs awarded by a court, may be made available by the first-named Contracting Party. The Installation State shall reimburse to the other Contracting Party any such sums paid. These two Contracting Parties shall agree on the procedure for reimbursement.

2. If the courts having jurisdiction are those of a Contracting Party other than the

Installation State, the Contracting Party whose courts have jurisdiction shall take all measures necessary to enable the Installation State to intervene in proceedings and to participate in any settlement concerning compensation.

ARTICLE V D

1. A meeting of the Contracting Parties shall be convened by the Director General of the International Atomic Energy Agency to amend the limits of liability referred to in Article V if one-third of the Contracting Parties express a desire to that effect.

2. Amendments shall be adopted by a two-thirds majority of the Contracting Parties present and voting, provided that at least one-half of the Contracting Parties shall be present at the time of the voting.

3. When acting on a proposal to amend the limits, the meeting of the Contracting Parties shall take into account, inter alia, the risk of damage resulting from a nuclear incident, changes in the monetary values, and the capacity of the insurance market.

4. (a) Any amendment adopted in accordance with paragraph 2 of this Article shall be notified by the Director General of the IAEA to all Contracting Parties for acceptance. The amendment shall be considered accepted at the end of a period of 18 months after it has been notified provided that at least one-third of the Contracting Parties at the time of the adoption of the amendment by the meeting have communicated to the Director General of the IAEA that they accept the amendment. An amendment accepted in accordance with this paragraph shall enter into force 12 months after its acceptance for those Contracting Parties which have accepted it.

(b) If, within a period of 18 months from the date of notification for acceptance, an amendment has not been accepted in accordance with sub-paragraph (a), the amendment shall be considered rejected.

5. For each Contracting Party accepting an amendment after it has been accepted

but not entered into force or after its entry into force in accordance with paragraph 4 of this Article, the amendment shall enter into force 12 months after its acceptance by that Contracting Party.

6. A State which becomes a Party to this Convention after the entry into force of an amendment in accordance with paragraph 4 of this Article shall, failing an expression of a different intention by that State -

(a) be considered as a Party to this Convention as so amended; and

(b) be considered as a Party to the unamended Convention in relation to any State Party not bound by the amendment.

ARTICLE 8

Article VI of the 1963 Vienna Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. (a) Rights of compensation under this Convention shall be extinguished if an action is not brought within -

(i) with respect to loss of life and personal injury, thirty years from the date of the nuclear incident;

(ii) with respect to other damage, ten years from the date of the nuclear incident.

(b) If, however, under the law of the Installation State, the liability of the operator is covered by insurance or other financial security including State funds for a longer period, the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after such a longer period which shall not exceed the period for which his

liability is so covered under the law of the Installation State.

(c) Actions for compensation with respect to loss of life and personal injury or, pursuant to an extension under sub-paragraph (b) of this paragraph with respect to other damage, which are brought after a period of ten years from the date of the nuclear incident shall in no case affect the rights of compensation under this Convention of any person who has brought an action against the operator before the expiry of that period.

2. Paragraph 2 is deleted.

3. Paragraph 3 is replaced by the following text:

3. Rights of compensation under the Convention shall be subject to prescription or extinction, as provided by the law of the competent court, if an action is not brought within three years from the date on which the person suffering damage had knowledge or ought reasonably to have had knowledge of the damage and of the operator liable for the damage, provided that the periods established pursuant to sub-paragraphs (a) and (b) of paragraph 1 of this Article shall not be exceeded.

ARTICLE 9

Article VII is amended as follows:

1. In paragraph 1, the following two sentences are added at the end of the paragraph and the paragraph so amended becomes sub-paragraph (a) of that paragraph:

Where the liability of the operator is unlimited, the Installation State may establish a limit of the financial security of the operator liable, provided that such limit is not lower than 300 million SDRs. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator to the extent that the yield of the financial security is inadequate to satisfy such claims,

but not in excess of the amount of the financial security to be provided under this paragraph.

2. A new sub-paragraph (b) is added to paragraph 1 as follows:

(b) Notwithstanding sub-paragraph (a) of this paragraph, where the liability of the operator is unlimited, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of financial security of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures the payment of claims for compensation for nuclear damage which have been established against the operator by providing necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, and up to the limit provided pursuant to sub-paragraph (a) of this paragraph.

3. In paragraph 3, the words "or sub-paragraphs (b) and (c) of paragraph 1 of Article V" are inserted after the words "of this Article".

ARTICLE 10

Article VIII of the 1963 Vienna Convention is amended as follows:

1. The text of Article VIII becomes paragraph 1 of that Article.

2. A new paragraph 2 is added as follows:

2. Subject to application of the rule of sub-paragraph (c) of paragraph 1 of Article VI, where in respect of claims brought against the operator the damage to be compensated under this Convention exceeds, or is likely to exceed, the maximum amount made available pursuant to paragraph 1 of Article V, priority in the distribution

of the compensation shall be given to claims in respect of loss of life or personal injury.

ARTICLE 11

In Article X of the 1963 Vienna Convention, a new sentence is added at the end of the Article as follows:

The right of recourse provided for under this Article may also be extended to benefit the Installation State insofar as it has provided public funds pursuant to this Convention.

ARTICLE 12

Article XI of the 1963 Vienna Convention is amended as follows:

1. A new paragraph 1bis is added as follows:

1bis. Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone, were one to be established, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party. The preceding sentence shall apply if that Contracting Party has notified the Depositary of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction in a manner which is contrary to the international law of the sea, including the United Nations Convention on the Law of the Sea.

2. Paragraph 2 is replaced by the following text:

2. Where a nuclear incident does not occur within the territory of any Contracting Party, or within an area notified pursuant to paragraph 1bis, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Installation State of the operator liable.

3. In paragraph 3, first line, and in sub-paragraph (b), after the figure "1", insert ", 1bis".

4. A new paragraph 4 is added as follows:

4. The Contracting Party whose courts have jurisdiction shall ensure that only one of its courts shall have jurisdiction in relation to any one nuclear incident.

ARTICLE 13

After Article XI a new Article XI A is added as follows:

ARTICLE XI A

The Contracting Party whose courts have jurisdiction shall ensure that in relation to actions for compensation of nuclear damage -

(a) any State may bring an action on behalf of persons who have suffered nuclear damage, who are nationals of that State or have their domicile or residence in its territory, and who have consented thereto; and

(b) any person may bring an action to enforce rights under this Convention acquired by subrogation or assignment.

ARTICLE 14

The text of Article XII of the 1963 Vienna Convention is replaced by the following text:

ARTICLE XII

1. A judgment that is no longer subject to ordinary forms of review entered by a court of a Contracting Party having jurisdiction shall be recognized, except -

(a) where the judgment was obtained by fraud;

(b) where the party against whom the judgment was pronounced was not given a fair opportunity to present his case; or

(c) where the judgment is contrary to the public policy of the Contracting Party within the territory of which recognition is sought, or is not in accord with fundamental standards of justice.

2. A judgment which is recognized under paragraph 1 of this Article shall, upon being presented for enforcement in accordance with the formalities required by the law of the Contracting Party where enforcement is sought, be enforceable as if it were a judgment of a court of that Contracting Party. The merits of a claim on which the judgment has been given shall not be subject to further proceedings.

ARTICLE 15

Article XIII of the 1963 Vienna Convention is amended as follows:

1. The text of Article XIII becomes paragraph 1 of that Article.

2. A new paragraph 2 is added as follows:

2. Notwithstanding paragraph 1 of this Article, insofar as compensation for nuclear damage is in excess of 150 million SDRs, the legislation of the Installation State may derogate from the provisions of this Convention with respect to nuclear damage suffered in the territory, or in any maritime zone established in accordance with the international law of the sea, of another State which at the time of the incident, has a nuclear installation in such territory, to the extent that it does not afford reciprocal benefits of an equivalent amount.

ARTICLE 16

The text of Article XVIII of the 1963 Vienna Convention is replaced by the following text:

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.

ARTICLE 17

After Article XX of the 1963 Vienna Convention a new Article XX A is added as follows:

ARTICLE XX A

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to the settlement of the dispute by negotiation or by any other peaceful means of settling disputes acceptable to them.

2. If a dispute of this character referred to in paragraph 1 of this Article cannot be settled within six months from the request for consultation pursuant to paragraph 1 of

this Article, it shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In cases of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. When ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2 of this Article. The other Contracting Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2 of this Article with respect to a Contracting Party for which such a declaration is in force.

4. A Contracting Party which has made a declaration in accordance with paragraph 3 of this Article may at any time withdraw it by notification to the depositary.

ARTICLE 18

1. Articles XX to XXV, paragraphs 2, 3 and paragraph number "1." of Article XXVI, Articles XXVII and XXIX of the 1963 Vienna Convention are deleted.

2. The 1963 Vienna Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single text that may be referred to as the 1997 Vienna Convention on Civil Liability for Nuclear Damage.

ARTICLE 19

1. A State which is a Party to this Protocol but not a Party to the 1963 Vienna Convention shall be bound by the provisions of that Convention as amended by this Protocol in relation to other States Parties hereto, and failing an expression of a different intention by that State

at the time of deposit of an instrument referred to in Article 20 shall be bound by the provisions of the 1963 Vienna Convention in relation to States which are only Parties thereto.

2. Nothing in this Protocol shall affect the obligations of a State which is a Party both to the 1963 Vienna Convention and to this Protocol with respect to a State which is a Party to the 1963 Vienna Convention but not a Party to this Protocol.

ARTICLE 20

1. This Protocol shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna from 29 September 1997 until its entry into force.

2. This Protocol is subject to ratification, acceptance or approval by States which have signed it.

3. After its entry into force, any State which has not signed this Protocol may accede to it.

4. The instruments of ratification, acceptance, approval or accession shall be deposited with the Director General of the International Atomic Energy Agency, who shall be the depositary of this Protocol.

ARTICLE 21

1. This Protocol shall enter into force three months after the date of deposit of the fifth instrument of ratification, acceptance or approval.

2. For each State ratifying, accepting, approving or acceding to this Protocol after the deposit of the fifth instrument of ratification, acceptance or approval, this Protocol shall enter into force three months after the date of deposit by such State of the appropriate instrument.

ARTICLE 22

1. Any Contracting Party may denounce this Protocol by written notification to the depositary.

2. Denunciation shall take effect one year after the date on which the notification is received by the depositary.

3. As between the Parties to this Protocol, denunciation by any of them of the 1963 Vienna Convention in accordance with its Article XXVI shall not be construed in any way as denunciation of the 1963 Vienna Convention as amended by this Protocol.

4. Notwithstanding a denunciation of this Protocol by a Contracting Party pursuant to this Article, the provisions of this Protocol shall continue to apply to any nuclear damage caused by a nuclear incident occurring before such denunciation takes effect.

ARTICLE 23

The depositary shall promptly notify States Parties and all other States of:

(a) each signature of this Protocol;

(b) each deposit of an instrument of ratification, acceptance, approval or accession;

(c) the entry into force of this Protocol;

(d) any notification received pursuant to paragraph 1bis of Article XI;

(e) requests for the convening of a revision conference pursuant to Article XXVI of the 1963 Vienna Convention and for a meeting of the Contracting Parties pursuant to Article V D of the 1963 Vienna Convention as amended by this Protocol;

(f) notifications of denunciations received pursuant to Article 22 and other pertinent notifications relating to this Protocol.

ARTICLE 24

1. The original of this Protocol, of which Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary.

2. The International Atomic Energy Agency shall establish the consolidated text of the 1963 Vienna Convention as amended by this Protocol in the Arabic, Chinese, English, French, Russian and Spanish languages as set forth in the annex to this Protocol.

3. The depositary shall communicate to all States the certified true copies of this Protocol together with the consolidated text of the 1963 Vienna Convention as amended by this Protocol.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Vienna, the twelfth day of September, one thousand nine hundred and ninety-seven.

1997 VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE

(Consolidated text of the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 as amended by the Protocol of 12 September 1997, established by the Secretariat of the International Atomic Energy Agency)

1997 VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE[1]

(Consolidated text of the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 as amended by the Protocol of 12 September 1997)

THE CONTRACTING PARTIES,

HAVING RECOGNIZED the desirability of establishing some minimum standards to provide financial protection against damage resulting from certain peaceful uses of nuclear energy,

BELIEVING that a convention on civil liability for nuclear damage would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

HAVE DECIDED to conclude a convention for such purposes, and thereto have agreed as follows -

ARTICLE I

1. For the purposes of this Convention -

(a) "Person" means any individual, partnership, any private or public body whether corporate or not, any international organization enjoying legal personality under the law of the Installation State, and any State or any of its constituent sub-divisions.

(b) "National of a Contracting Party" includes a Contracting Party or any of its constituent sub-divisions, a partnership, or any private or public body whether corporate or not established within the territory of a Contracting Party.

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[1] This consolidated text of the 1963 Vienna Convention on Civil Liability for Nuclear Damage as amended by the 1997 Protocol thereto has been established by the Secretariat of the International Atomic Energy Agency as required by that Protocol.

The consolidated text does not have final clauses of its own. A State wishing to adhere to the 1963 Vienna Convention as amended by the 1997 Protocol may do so by adhering to the 1997 Protocol in accordance with its terms.

Reference to the "Protocol" in this consolidated text means the 1997 "Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage".

(c) "Operator", in relation to a nuclear installation, means the person designated or recognized by the Installation State as the operator of that installation.

(d) "Installation State", in relation to a nuclear installation, means the Contracting Party within whose territory that installation is situated or, if it is not situated within the territory of any State, the Contracting Party by which or under the authority of which the nuclear installation is operated.

(e) "Law of the competent court" means the law of the court having jurisdiction under this Convention, including any rules of such law relating to conflict of laws.

(f) "Nuclear fuel" means any material which is capable of producing energy by a self-sustaining chain process of nuclear fission.

(g) "Radioactive products or waste" means any radioactive material produced in, or any material made radioactive by exposure to the radiation incidental to, the production or utilization of nuclear fuel, but does not include radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose.

(h) "Nuclear material" means -

(i) nuclear fuel, other than natural uranium and depleted uranium, capable of producing energy by a self-sustaining chain process of nuclear fission outside a nuclear reactor, either alone or in combination with some other material; and

(ii) radioactive products or waste.

(i) "Nuclear reactor" means any structure containing nuclear fuel in such an arrangement that a self-sustaining chain process of nuclear fission can occur therein without an additional source of neutrons.

(j) "Nuclear installation" means -

(i) any nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose;

(ii) any factory using nuclear fuel for the production of nuclear material, or any factory for the processing of nuclear material, including any factory for the re-processing of irradiated nuclear fuel;

(iii) any facility where nuclear material is stored, other than storage incidental to the carriage of such material; and

(iv) such other installations in which there are nuclear fuel or radioactive products or waste as the Board of Governors of the International Atomic Energy Agency shall from time to time determine;

provided that the Installation State may determine that several nuclear installations of one operator which are located at the same site shall be considered as a single nuclear installation.

(k) "Nuclear Damage" means -

(i) loss of life or personal injury;

(ii) loss of or damage to property;

and each of the following to the extent determined by the law of the competent court -

(iii) economic loss arising from loss or damage referred to in sub-paragraph (i) or (ii), insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage;

(iv) the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in sub-paragraph (ii);

(v) loss of income deriving from an economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in sub-paragraph (ii);

(vi) the costs of preventive measures, and further loss or damage caused by such measures;

(vii) any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court,

in the case of sub-paragraphs (i) to (v) and (vii) above, to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.

(l) "Nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage.

(m) "Measures of reinstatement" means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The law of the State where the damage is suffered shall determine who is entitled to take such measures.

(n) "Preventive measures" means any reasonable measures taken by any person after a nuclear incident has occurred to prevent or minimize damage referred to in sub-paragraphs (k)(i) to (v) or (vii), subject to any approval of the competent authorities required by the law of the State where the measures were taken.

(o) "Reasonable measures" means measures which are found under the law of the competent court to be appropriate and proportionate having regard to all the circumstances, for example -

(i) the nature and extent of the damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;

(ii) the extent to which, at the time they are taken, such measures are likely to be effective; and

(iii) relevant scientific and technical expertise.

(p) "Special Drawing Right", hereinafter referred to as SDR, means the unit of account defined by the International Monetary Fund and used by it for its own operations and transactions.

2. An Installation State may, if the small extent of the risks involved so warrants, exclude any nuclear installation or small quantities of nuclear material from the application of this Convention, provided that -

(a) with respect to nuclear installations, criteria for such exclusion have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State satisfies such criteria; and

(b) with respect to small quantities of nuclear material, maximum limits for the exclusion of such quantities have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State is within such established limits.

The criteria for the exclusion of nuclear installations and the maximum limits for the exclusion of small quantities of nuclear material shall be reviewed periodically by the Board of Governors.

ARTICLE I A

1. This Convention shall apply to nuclear damage wherever suffered.

2. However, the legislation of the Installation State may exclude from the application of this Convention damage suffered -

(a) in the territory of a non-Contracting State; or

(b) in any maritime zones established by a non-Contracting State in accordance with the international law of the sea.

3. An exclusion pursuant to paragraph 2 of this Article may apply only in respect of a non-Contracting State which at the time of the incident -

(a) has a nuclear installation in its territory or in any maritime zones established by it in accordance with the international law of the sea; and

(b) does not afford equivalent reciprocal benefits.

4. Any exclusion pursuant to paragraph 2 of this Article shall not affect the rights referred to in sub-paragraph (a) of paragraph 2 of Article IX and any exclusion pursuant to paragraph 2(b) of this Article shall not extend to damage on board or to a ship or an aircraft.

ARTICLE I B

This Convention shall not apply to nuclear installations used for non-peaceful purposes.

ARTICLE II

1. The operator of a nuclear installation shall be liable for nuclear damage upon proof that such damage has been caused by a nuclear incident -

(a) in his nuclear installation; or

(b) involving nuclear material coming from or originating in his nuclear installation, and occurring -

(i) before liability with regard to nuclear incidents involving the nuclear material has been assumed, pursuant to the express terms of a contract in writing, by the operator of another nuclear installation;

(ii) in the absence of such express terms, before the operator of another nuclear installation has taken charge of the nuclear material; or

(iii) where the nuclear material is intended to be used in a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose, before the person duly authorized to operate such reactor has taken charge of the nuclear material; but

(iv) where the nuclear material has been sent to a person within the territory of a non-Contracting State, before it has been unloaded from the means of transport by which it has arrived in the territory of that non-Contracting State;

(c) involving nuclear material sent to his nuclear installation, and occurring -

(i) after liability with regard to nuclear incidents involving the nuclear material has been assumed by him, pursuant to the express terms of a contract in writing, from the operator of another nuclear installation;

(ii) in the absence of such express terms, after he has taken charge of the nuclear material; or

(iii) after he has taken charge of the nuclear material from a person operating a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose; but

(iv) where the nuclear material has, with the written consent of the operator, been sent from a person within the territory of a non-Contracting State, only after it has been loaded on the means of transport by which it is to be carried from the territory of that State;

provided that, if nuclear damage is caused by a nuclear incident occurring in a nuclear installation and involving nuclear material stored therein incidentally to the carriage of such material, the provisions of sub-paragraph (a) of this paragraph shall not apply where another operator or person is solely liable pursuant to the provisions of sub-paragraph (b) or (c) of this paragraph.

2. The Installation State may provide by legislation that, in accordance with such terms as may be specified therein, a carrier of nuclear material or a person handling radioactive waste may, at his request and with the consent of the operator concerned, be designated or recognized as operator in the place of that operator in respect of such nuclear material or radioactive waste respectively. In this case such carrier or such person shall be considered, for all the purposes of this Convention, as an operator of a nuclear installation situated within the territory of that State.

3. (a) Where nuclear damage engages the liability of more than one operator, the operators involved shall, in so far as the damage attributable to each operator is not reasonably separable, be jointly and severally liable. The Installation State may limit the amount of public funds made available per incident to the difference, if any, between the amounts hereby established and the amount established pursuant to paragraph 1 of Article V.

(b) Where a nuclear incident occurs in the course of carriage of nuclear material, either in one and the same means of transport, or, in the case of storage incidental to the carriage, in one and the same nuclear installation, and causes nuclear damage which engages the liability of more than one operator, the total liability shall not exceed the highest amount applicable with respect to any one of them pursuant to Article V.

(c) In neither of the cases referred to in sub-paragraphs (a) and (b) of this paragraph shall the liability of any one operator exceed the amount applicable with respect to him pursuant to Article V.

4. Subject to the provisions of paragraph 3 of this Article, where several nuclear installations of one and the same operator are involved in one nuclear incident, such operator shall be liable in respect of each nuclear installation involved up to the amount applicable with respect to him pursuant to Article V. The Installation State may limit the amount of public funds made available as provided for in sub-paragraph (a) of paragraph 3 of this Article.

5. Except as otherwise provided in this Convention, no person other than the operator shall be liable for nuclear damage. This, however, shall not affect the application of any international convention in the field of transport in force or open for signature, ratification or accession at the date on which this Convention is opened for signature.

6. No person shall be liable for any loss or damage which is not nuclear damage pursuant to sub-paragraph (k) of paragraph 1 of Article I but which could have been determined as such pursuant to the provisions of that sub-paragraph.

7. Direct action shall lie against the person furnishing financial security pursuant to Article VII, if the law of the competent court so provides.

ARTICLE III

The operator liable in accordance with this Convention shall provide the carrier with a certificate issued by or on behalf of the insurer or other financial guarantor furnishing the financial security required pursuant to Article VII. However, the Installation State may exclude this obligation in relation to carriage which takes place wholly within its own territory. The certificate shall state the name and address of that operator and the amount, type and duration of the security, and these statements may not be disputed by the person by whom or on whose behalf the certificate was issued. The certificate shall also indicate the nuclear material in respect of which the security applies and shall include a statement by the competent public authority of the Installation State that the person named is an operator within the meaning of this Convention.

ARTICLE IV

1. The liability of the operator for nuclear damage under this Convention shall be absolute.

2. If the operator proves that the nuclear damage resulted wholly or partly either from the gross negligence of the person suffering the damage or from an act or omission of such person done with intent to cause damage, the competent court may, if its law so provides, relieve the operator wholly or partly from his obligation to pay compensation in respect of the damage suffered by such person.

3. No liability under this Convention shall attach to an operator if he proves that the nuclear damage is directly due to an act of armed conflict, hostilities, civil war or insurrection.

4. Whenever both nuclear damage and damage other than nuclear damage have been caused by a nuclear incident or jointly by a nuclear incident and one or more other occurrences, such other damage shall, to the extent that it is not reasonably separable from the nuclear damage, be deemed, for the purposes of this Convention, to be nuclear damage caused by that nuclear incident. Where, however, damage is caused jointly by a nuclear incident covered by this Convention and by an emission of ionizing radiation not covered by it, nothing in this Convention shall limit or otherwise affect the liability, either as regards any person suffering nuclear damage or by way of recourse or contribution, of any person who may be held liable in connection with that emission of ionizing radiation.

5. The operator shall not be liable under this Convention for nuclear damage -

(a) to the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and

(b) to any property on that same site which is used or to be used in connection with any such installation.

6. Compensation for damage caused to the means of transport upon which the nuclear material involved was at the time of the nuclear incident shall not have the effect of reducing the liability of the operator in respect of other damage to an amount less than either 150 million SDRs, or any higher amount established by the legislation of a Contracting Party, or an amount established pursuant to sub-paragraph (c) of paragraph 1 of Article V.

7. Nothing in this Convention shall affect the liability of any individual for nuclear damage for which the operator, by virtue of paragraph 3 or 5 of this Article, is not liable under this Convention and which that individual caused by an act or omission done with intent to cause damage.

ARTICLE V

1. The liability of the operator may be limited by the Installation State for any one nuclear incident, either -

(a) to not less than 300 million SDRs; or

(b) to not less than 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds shall be made available by that State to compensate nuclear damage; or

(c) for a maximum of 15 years from the date of entry into force of this Protocol, to a transitional amount of not less than 100 million SDRs in respect of a nuclear incident occurring within that period. An amount lower than 100 million SDRs may be established, provided that public funds shall be made available by that State to compensate nuclear damage between that lesser amount and 100 million SDRs.

2. Notwithstanding paragraph 1 of this Article, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of liability of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures that public funds shall be made available up to the amount established pursuant to paragraph 1.

3. The amounts established by the Installation State of the liable operator in accordance with paragraphs 1 and 2 of this Article and paragraph 6 of Article IV shall apply wherever the nuclear incident occurs.

ARTICLE V A

1. Interest and costs awarded by a court in actions for compensation of nuclear damage shall be payable in addition to the amounts referred to in Article V.

2. The amounts mentioned in Article V and paragraph 6 of Article IV may be converted into national currency in round figures.

ARTICLE V B

Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation.

ARTICLE V C

1. If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the public funds required under sub-paragraphs (b) and (c) of paragraph 1 of Article V and under paragraph 1 of Article VII, as well as interest and costs awarded by a court, may be made available by the first-named Contracting Party. The Installation State shall reimburse to the other Contracting Party any such sums paid. These two Contracting Parties shall agree on the procedure for reimbursement.

2. If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the Contracting Party whose courts have jurisdiction shall take all measures necessary to enable the Installation State to intervene in proceedings and to participate in any settlement concerning compensation.

ARTICLE V D

1. A meeting of the Contracting Parties shall be convened by the Director General of the International Atomic Energy Agency to amend the limits of liability referred to in Article V if one-third of the Contracting Parties express a desire to that effect.

2. Amendments shall be adopted by a two-thirds majority of the Contracting Parties present and voting, provided that at least one-half of the Contracting Parties shall be present at the time of the voting.

3. When acting on a proposal to amend the limits, the meeting of the Contracting Parties shall take into account, inter alia, the risk of damage resulting from a nuclear incident, changes in the monetary values, and the capacity of the insurance market.

4. (a) Any amendment adopted in accordance with paragraph 2 of this Article shall be notified by the Director General of the IAEA to all Contracting Parties for acceptance. The amendment shall be considered accepted at the end of a period of 18 months after it has been notified provided that at least one-third of the Contracting Parties at the time of the adoption of the amendment by the meeting have communicated to the Director General of the IAEA that they accept the amendment. An amendment accepted in accordance with this

paragraph shall enter into force 12 months after its acceptance for those Contracting Parties which have accepted it.

(b) If, within a period of 18 months from the date of notification for acceptance, an amendment has not been accepted in accordance with sub-paragraph (a), the amendment shall be considered rejected.

5. For each Contracting Party accepting an amendment after it has been accepted but not entered into force or after its entry into force in accordance with paragraph 4 of this Article, the amendment shall enter into force 12 months after its acceptance by that Contracting Party.

6. A State which becomes a Party to this Convention after the entry into force of an amendment in accordance with paragraph 4 of this Article shall, failing an expression of a different intention by that State -

(a) be considered as a Party to this Convention as so amended; and

(b) be considered as a Party to the unamended Convention in relation to any State Party not bound by the amendment.

ARTICLE VI

1. (a) Rights of compensation under this Convention shall be extinguished if an action is not brought within -

(i) with respect to loss of life and personal injury, thirty years from the date of the nuclear incident;

(ii) with respect to other damage, ten years from the date of the nuclear incident.

(b) If, however, under the law of the Installation State, the liability of the operator is covered by insurance or other financial security including State funds for a longer period, the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after such a longer period which shall not exceed the period for which his liability is so covered under the law of the Installation State.

(c) Actions for compensation with respect to loss of life and personal injury or, pursuant to an extension under sub-paragraph (b) of this paragraph with respect to other damage, which are brought after a period of ten years from the date of the nuclear incident shall in no case affect the rights of compensation under this Convention of any person who has brought an action against the operator before the expiry of that period.

2. DELETED

3. Rights of compensation under the Convention shall be subject to prescription or extinction, as provided by the law of the competent court, if an action is not brought within three years from the date on which the person suffering damage had knowledge or ought reasonably to have had knowledge of the damage and of the operator liable for the damage, provided that the periods established pursuant to sub-paragraphs (a) and (b) of paragraph 1 of this Article shall not be exceeded.

4. Unless the law of the competent court otherwise provides, any person who claims to have suffered nuclear damage and who has brought an action for compensation within the period applicable pursuant to this Article may amend his claim to take into account any aggravation of the damage, even after the expiry of that period, provided that final judgment has not been entered.

5. Where jurisdiction is to be determined pursuant to sub-paragraph (b) of paragraph 3 of Article XI and a request has been made within the period applicable pursuant to this Article to any one of the Contracting Parties empowered so to determine, but the time remaining after such determination is less than six months, the period within which an action may be brought shall be six months, reckoned from the date of such determination.

ARTICLE VII

1. (a) The operator shall be required to maintain insurance or other financial security covering his liability for nuclear damage in such amount, of such type and in such terms as the Installation State shall specify. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator by providing the necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, but not in excess of the limit, if any, established pursuant to Article V. Where the liability of the operator is unlimited, the Installation State may establish a limit of the financial security of the operator liable, provided that such limit is not lower than 300 million SDRs. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator to the extent that the yield of the financial security is inadequate to satisfy such claims, but not in excess of the amount of the financial security to be provided under this paragraph.

(b) Notwithstanding sub-paragraph (a) of this paragraph, where the liability of the operator is unlimited, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of financial security of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures the payment of claims for compensation for nuclear damage which have been established against the operator by providing necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, and up to the limit provided pursuant to sub-paragraph (a) of this paragraph.

2. Nothing in paragraph 1 of this Article shall require a Contracting Party or any of its constituent sub-divisions, such as States or Republics, to maintain insurance or other financial security to cover their liability as operators.

3. The funds provided by insurance, by other financial security or by the Installation State pursuant to paragraph 1 of this Article or sub-paragraphs (b) and (c) of paragraph 1 of Article V shall be exclusively available for compensation due under this Convention.

4. No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided pursuant to paragraph 1 of this Article without giving notice in writing of at least two months to the competent public authority or, in so far as such insurance or other financial security relates to the carriage of nuclear material, during the period of the carriage in question.

ARTICLE VIII

1. Subject to the provisions of this Convention, the nature, form and extent of the compensation, as well as the equitable distribution thereof, shall be governed by the law of the competent court.

2. Subject to application of the rule of sub-paragraph (c) of paragraph 1 of Article VI, where in respect of claims brought against the operator the damage to be compensated under this Convention exceeds, or is likely to exceed, the maximum amount made available pursuant to paragraph 1 of Article V, priority in the distribution of the compensation shall be given to claims in respect of loss of life or personal injury.

ARTICLE IX

1. Where provisions of national or public health insurance, social insurance, social security, workmen's compensation or occupational disease compensation systems include compensation for nuclear damage, rights of beneficiaries of such systems to obtain compensation under this Convention and rights of recourse by virtue of such systems against the operator liable shall be determined, subject to the provisions of this Convention, by the law of the Contracting Party in which such systems have been established, or by the regulations of the intergovernmental organization which has established such systems.

2. (a) If a person who is a national of a Contracting Party, other than the operator, has paid compensation for nuclear damage under an international convention or under the law of a non-Contracting State, such person shall, up to the amount which he has paid, acquire by subrogation the rights under this Convention of the person so compensated. No rights shall be so acquired by any person to the extent that the operator has a right of recourse against such person under this Convention.

(b) Nothing in this Convention shall preclude an operator who has paid compensation for nuclear damage out of funds other than those provided pursuant to paragraph 1 of Article VII from recovering from the person providing financial security pursuant to that paragraph or from the Installation State, up to the amount he has paid, the sum which the person so compensated would have obtained under this Convention.

ARTICLE X

The operator shall have a right of recourse only -

(a) if this is expressly provided for by a contract in writing; or

(b) if the nuclear incident results from an act or omission done with intent to cause damage, against the individual who has acted or omitted to act with such intent.

The right of recourse provided for under this Article may also be extended to benefit the Installation State insofar as it has provided public funds pursuant to this Convention.

ARTICLE XI

1. Except as otherwise provided in this Article, jurisdiction over actions under Article II shall lie only with the courts of the Contracting Party within whose territory the nuclear incident occurred.

1bis. Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone, were one to be established, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party. The preceding sentence shall apply if that Contracting Party has notified the Depositary of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction in a manner which is contrary to the international law of the sea, including the United Nations Convention on the Law of the Sea.

2. Where a nuclear incident does not occur within the territory of any Contracting Party, or within an area notified pursuant to paragraph 1bis, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Installation State of the operator liable.

3. Where under paragraph 1, 1bis or 2 of this Article, jurisdiction would lie with the courts of more than one Contracting Party, jurisdiction shall lie -

(a) if the nuclear incident occurred partly outside the territory of any Contracting Party, and partly within the territory of a single Contracting Party, with the courts of the latter; and

(b) in any other case, with the courts of that Contracting Party which is determined by agreement between the Contracting Parties whose courts would be competent under paragraph 1, 1bis or 2 of this Article.

4. The Contracting Party whose courts have jurisdiction shall ensure that only one of its courts shall have jurisdiction in relation to any one nuclear incident.

ARTICLE XI A

The Contracting Party whose courts have jurisdiction shall ensure that in relation to actions for compensation of nuclear damage -

(a) any State may bring an action on behalf of persons who have suffered nuclear damage, who are nationals of that State or have their domicile or residence in its territory, and who have consented thereto; and

(b) any person may bring an action to enforce rights under this Convention acquired by subrogation or assignment.

ARTICLE XII

1. A judgment that is no longer subject to ordinary forms of review entered by a court of a Contracting Party having jurisdiction shall be recognized, except -

(a) where the judgment was obtained by fraud;

(b) where the party against whom the judgment was pronounced was not given a fair opportunity to present his case; or

(c) where the judgment is contrary to the public policy of the Contracting Party within the territory of which recognition is sought, or is not in accord with fundamental standards of justice.

2. A judgment which is recognized under paragraph 1 of this Article shall, upon being presented for enforcement in accordance with the formalities required by the law of the Contracting Party where enforcement is sought, be enforceable as if it were a judgment of a court of that Contracting Party. The merits of a claim on which the judgment has been given shall not be subject to further proceedings.

ARTICLE XIII

1. This Convention and the national law applicable thereunder shall be applied without any discrimination based upon nationality, domicile or residence.

2. Notwithstanding paragraph 1 of this Article, insofar as compensation for nuclear damage is in excess of 150 million SDRs, the legislation of the Installation State may derogate from the provisions of this Convention with respect to nuclear damage suffered in the territory, or in any maritime zone established in accordance with the international law of the sea, of another State which at the time of the incident, has a nuclear installation in such territory, to the extent that it does not afford reciprocal benefits of an equivalent amount.

ARTICLE XIV

Except in respect of measures of execution, jurisdictional immunities under rules of national or international law shall not be invoked in actions under this Convention before the courts competent pursuant to Article XI.

ARTICLE XV

The Contracting Parties shall take appropriate measures to ensure that compensation for nuclear damage, interest and costs awarded by a court in connection therewith, insurance and reinsurance premiums and funds provided by insurance, reinsurance or other financial security, or funds provided by the Installation State, pursuant to this Convention, shall be freely transferable into the currency of the Contracting Party within whose territory the damage is suffered, and of the Contracting Party within whose territory the claimant is habitually resident, and, as regards insurance or reinsurance premiums and payments, into the currencies specified in the insurance or reinsurance contract.

ARTICLE XVI

No person shall be entitled to recover compensation under this Convention to the extent that he has recovered compensation in respect of the same nuclear damage under another international convention on civil liability in the field of nuclear energy.

ARTICLE XVII

This Convention shall not, as between the parties to them, affect the application of any international agreements or international conventions on civil liability in the field of nuclear energy in force, or open for signature, ratification or accession at the date on which this Convention is opened for signature.

ARTICLE XVIII

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.

ARTICLE XIX

1. Any Contracting Party entering into an agreement pursuant to sub-paragraph (b) of paragraph 3 of Article XI shall furnish without delay to the Director General of the International Atomic Energy Agency for information and dissemination to the other Contracting Parties a copy of such agreement.

2. The Contracting Parties shall furnish to the Director General for information and dissemination to the other Contracting Parties copies of their respective laws and regulations relating to matters covered by this Convention.

ARTICLE XX

DELETED

ARTICLE XX A

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to the settlement of the dispute by negotiation or by any other peaceful means of settling disputes acceptable to them.

2. If a dispute of this character referred to in paragraph 1 of this Article cannot be settled within six months from the request for consultation pursuant to paragraph 1 of this Article, it shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In cases of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. When ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2 of this Article. The other Contracting Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2 of this Article with respect to a Contracting Party for which such a declaration is in force.

4. A Contracting Party which has made a declaration in accordance with paragraph 3 of this Article may at any time withdraw it by notification to the depositary.

ARTICLE XXI

DELETED

ARTICLE XXII

DELETED

ARTICLE XXIII

DELETED

ARTICLE XXIV

DELETED

ARTICLE XXV

DELETED

ARTICLE XXVI

A conference shall be convened by the Director General of the International Atomic Energy Agency at any time after the expiry of a period of five years from the date of the entry into force of this Convention in order to consider the revision thereof, if one-third of the Contracting Parties express a desire to that effect.

ARTICLE XXVII

DELETED

ARTICLE XXVIII

This Convention shall be registered by the Director General of the International Atomic Energy Agency in accordance with Article 102 of the Charter of the United Nations.

ARTICLE XXIX

DELETED

International Atomic Energy Agency
INFORMATION CIRCULAR

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INFCIRC/566/Add.1
INFCIRC/567/Add.1
23 July 1998

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PROTOCOL TO AMEND THE VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE

CONVENTION ON SUPPLEMENTARY COMPENSATION FOR NUCLEAR DAMAGE

FINAL ACT

1. The Diplomatic Conference, which was convened by the Director General in Vienna from 8 to 12 September 1997, adopted the above referenced instruments reproduced in documents INFCIRC/566 and INFCIRC/567.

2. The Final Act of the Diplomatic Conference is reproduced herein for the information of all Members.

For reasons of economy, this document has been printed in a limited number.

98-02439

FINAL ACT

1. The Board of Governors of the International Atomic Energy Agency (IAEA) at its meeting on 11 June 1997 authorized the Director General to convene a Diplomatic Conference to adopt a Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage and to adopt a Convention on Supplementary Funding.

2. The Conference met in Vienna at the Headquarters of the IAEA, 8 - 12 September 1997.

3. The Governments of the following States were represented at the Conference: Algeria, Argentina, Armenia, Australia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Czech Republic, Denmark, Ecuador, Egypt, Finland, France, Georgia, Germany, Greece, Guatemala, Holy See, Hungary, India, Indonesia, Iran, Islamic Republic of, Iraq, Ireland, Israel, Italy, Japan, Jordan, Korea, Republic of, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Sudan, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Thailand, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Viet Nam and Yemen.

4. The following international organizations were represented by observers at the Conference: International Maritime Organization, United Nations, European Union/European Commission and OECD Nuclear Energy Agency. The following non-governmental organizations were represented by observers at the Conference: British/European Insurance Committee, Greenpeace and UNIPEDE.

5 The Conference was opened by Mr David Waller, the Acting Director General, on behalf of Dr Hans Blix, Director General of the IAEA. Dr Blix and Mr Waller also addressed the Conference.

6 The Conference elected Mr J. Mišák, (Slovakia) as President, and Ms. C. E. Kessler (United States of America), Mr. S.C.M. Abi-Sad (Brazil), Mr. C. Zeileissen (Austria), Mr J. Łopuski (Poland), H.E. Mr. A. Halim Mohamed (Sudan), Mr. E. Khalilipour Langeroudi (Iran, Islamic Republic of), H.E. Mr. L.L. Joseph (Australia) and Mr. Chung Won Cho (Korea, Republic of) as Vice-Presidents.

7 The Conference set up a Committee of the Whole of which the members were all States participating in the Conference. The Conference elected Judge T. Melchior (Denmark) as Chairman of the Committee of the Whole, and Mr. G. Maffei (Argentina) as Vice Chairman.

8 The Conference set up a Drafting Committee of which the members were the representatives of the following States: Australia, Austria, Belgium, China, Cuba, France, Italy, Jordan, Korea, Republic of, Mexico, Morocco, Netherlands, Norway, Russian Federation, Syrian Arab Republic, Ukraine, United Kingdom of Great Britain and Northern Ireland, and the United States of America.

The Conference elected Mr. A. Gioia (Italy) as Chairman of the Drafting Committee.

9 The Conference had before it as the basic proposal for its discussions the following documents: the Draft Protocol to amend the Vienna Convention on Civil Liability for Nuclear Damage and the Draft Convention on Supplementary Funding (Documents NL/DC/3 and NL/DC/4), prepared by the IAEA Standing Committee on Liability for Nuclear Damage under the Chairmanship of H.E. Mr. C. Lidgard.

10 On the basis of its deliberations, the Conference adopted on 12 September 1997 the Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage and the Convention on Supplementary Compensation for Nuclear Damage which are attached to this Final Act, and which will be opened for signature in accordance with their provisions at the Headquarters of the IAEA from 29 September 1997. The Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage and the Convention on Supplementary Compensation for Nuclear Damage are subject to ratification, acceptance, approval or accession. They will be deposited with the Director General of the IAEA.

11. The following States made statements after the adoption of the Protocol and the Convention, which will be reflected in the summary records of the Conference: Belgium, China, Ecuador, Egypt, Germany, New Zealand, Norway, Pakistan, Turkey and Ukraine.

12. The Conference adopted this Final Act. The original of this Final Act, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, is deposited with the Director General of the IAEA.

IN WITNESS WHEREOF the undersigned have affixed their signatures to this Final Act.

DONE at Vienna this twelfth day of September, one thousand nine hundred and ninety-seven.